A/64/33

United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

General Assembly
Official Records
Sixty-fourth Session
Supplement No. 33

General Assembly
Official Records
Sixty-fourth Session
Supplement No. 33

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

United Nations • New York, 2009

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255-1276

Contents

Chapter		Page
I.	Introduction	1
II.	Recommendations and decisions of the Special Committee	4
III.	Maintenance of international peace and security	5
	A. Consideration of the further revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations"	5
	B. Implementation of the provisions of the Charter relating to assistance to third States affected by sanctions	6
	C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions	7
	D. Consideration of the further revised working paper submitted by Cuba at the present session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"	8
	E. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security	12
	F. Consideration of the revised working paper submitted by Belarus and the Russian Federation	12
IV.	Peaceful settlement of disputes	14
V.	*Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*	15
VI.	Working methods of the Special Committee and identification of new subjects	17
	A. Working methods of the Special Committee	17
	B. Identification of new subjects	17
Annex		19

Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 63/127 and met at United Nations Headquarters from 17 to 25 February 2009.

2. In accordance with paragraph 5 of General Assembly resolution 50/52, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 255th, on 17 February, and the 256th, on 25 February. The Working Group of the Whole, established at the 255th meeting, held four meetings, on 17, 18, 20 and 25 February. Informal consultations were also held on 17, 18, 19, 20 and 23 February.

4. On behalf of the Secretary-General, the session was opened by Peter Taksøe-Jensen, Assistant Secretary-General for Legal Affairs.

5. At its 255th meeting, on 17 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981[1] and taking into account the results of the pre-session informal consultations among Member States, held on 30 January, elected the following members of its Bureau:

Chairperson:
Emmanuel Bichet (Switzerland)

Vice-Chairpersons:
Marcelo Böhlke (Brazil)
Ara Margarian (Armenia)

Rapporteur:
Kautu Moeletsi (Lesotho)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs acted as Secretary of the Special Committee. The Deputy Director of the Division acted as Deputy Secretary of the Special Committee and Secretary of the Working Group of the Whole. The Codification Division provided the substantive services for the Special Committee and the Working Group.

8. At its 255th meeting, on 17 February, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

[1] See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

5. Consideration of the questions referred to in General Assembly resolution 63/127 of 11 December 2008, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

9. General statements touching on all or several items were made at the 255th meeting, as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it a revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations", which was contained in the annex to the 2008 report of the Special Committee;[2] all of the related reports of the Secretary-General,[3] including the most recent one, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions",[4] and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162;[5] and a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions.[6]

11. Also with regard to the question of the maintenance of international peace and security, the Special Committee had before it a further revised working paper,[7]

---

[2] See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 33* (A/63/33), para. 20. The Russian Federation submitted in 1998 a working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100; see A/53/33, para. 45) and a revised version thereof in 2000 (A/AC.182/L.100/Rev.1; see A/55/33, para. 52). During the Committee's 2002 session, an addendum entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" was submitted (A/AC.182/L.100/Rev.1/Add.1; see A/57/33, para. 54), and further revised versions of the working paper were introduced at the 2003 session (A/AC.182/L.114; see A/58/33, para. 39) and at the 2004 session (A/AC.182/L.114/Rev.1; see A/59/33, para. 32). Also at the 2004 session, as a result of informal consultations, the Russian Federation submitted a further revised working paper to be considered at the Committee's 2005 session (ibid., para. 70). At the 2007 session, the Russian Federation submitted a further revised version of its working paper entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations" (A/AC.182/L.114/Rev.2; see A/62/33, para. 23). The Russian Federation submitted a revised working paper, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations", during the sixty-second session of the General Assembly (A/C.6/62/L.6).

[3] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320, A/61/304 and A/62/206 and Corr.1.

[4] A/63/224.

[5] A/53/312.

[6] A/AC.182/L.110/Rev.1; see A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee's 2001 session (A/AC.182/L.110 and Corr.1; see A/56/33, para. 116).

[7] A/AC.182/L.93/Rev.1.

introduced by Cuba during the 2nd meeting of the Working Group of the Whole on 18 February, on the proposal submitted by the same delegation at the 1997 session entitled "Strengthening of the role of the Organization and enhancing its effectiveness";[8] a revised proposal submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[9] and a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a draft General Assembly resolution.[10]

12. At its 256th meeting, on 25 February 2009, the Special Committee adopted its report on its 2009 session.

[8] A/AC.182/L.93; see A/52/33 and Corr.1, para. 59. An addendum to the proposal was submitted at the 1998 session (A/AC.182/L.93/Add.1; see A/53/33, para. 84).

[9] A/AC.182/L.99; see A/53/33, para. 98.

[10] See A/60/33, para. 56. During the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper containing a draft General Assembly resolution (A/AC.182/L.104) in which it was recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/AC.182/L.104/Rev.1; see A/54/33, paras. 89-101). A further revised version was submitted at the 2001 session (A/AC.182/L.104/Rev.2; see A/56/33, para. 178).

Chapter II

Recommendations and decisions of the Special Committee

13. The Special Committee submits to the General Assembly:

(a) With regard to the question of the maintenance of international peace and security, in particular the strengthening of the role of the Organization and enhancing its effectiveness, the recommendations in paragraphs 20 and 42 below, as well as the recommendation in paragraph 38 of its 2006 report;[11]

(b) With regard to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 49 below.

[11] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 33* (A/61/33).

Chapter III
Maintenance of international peace and security

A. Consideration of the further revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations"

14. The further revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations", contained in the annex to the 2008 report of the Special Committee (see note 2 above), was referred to in the general exchange of views held at the 255th meeting of the Special Committee, on 17 February 2009. It was also discussed at the 1st meeting of the Working Group of the Whole, on the same day.

15. The sponsor delegation pointed out that various aspects of sanctions, including their strong and weak sides and their application procedures, were being evaluated in various forums with the aim of, inter alia, enhancing the transparency of sanctions regimes and taking into account human rights. Noting that valuable results had already been achieved in this field, the sponsor delegation stressed that the General Assembly, within the framework of its prerogatives, as set out in the Charter of the United Nations, could also significantly contribute to the elaboration of practical recommendations aimed at enhancing the effectiveness of sanctions, monitoring their application and minimizing their negative effects.

16. The sponsor delegation also emphasized that the text, as further revised, reflected comments and suggestions made by all the interested delegations and had received broad support in the Special Committee. There were not many unresolved issues left concerning the new text, as it emerged from its paragraph-by-paragraph consideration during the 2008 session of the Committee, and the Special Committee could recommend annexing it to a resolution of the General Assembly at the current session of the Committee. The sponsor delegation announced its intention to conduct informal consultations on the revised working paper and to take into account all concrete suggestions presented by other delegations regarding the text.

17. Several delegations supported further consideration of the proposal by the Committee and encouraged the Committee to conclude its deliberations on the proposal. Some delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter and international law, should be clearly defined and should be introduced only after all means of peaceful settlement had been exhausted and their effects had been thoroughly considered. They should not be applied "preventively" in instances of mere violation of international law, norms or standards and should be imposed only when there existed a threat to international peace and security or an act of aggression. It was reiterated that targeted sanctions constituted a better option for minimizing negative effects on civilian populations. Sanctions should have a specified time frame, be subject to periodic review and be lifted as soon as their objectives were achieved. It was reiterated that the International Law Commission should consider the issue of the legal consequences of the imposition of unlawful sanctions by the Security Council under the topic "Responsibility of international organizations". Concern

was expressed over the imposition of unilateral sanctions in violation of international law and the right to development. The need to improve sanctions regimes was also emphasized. A point was made that the role of the General Assembly should be strengthened in relation to sanctions.

18. At the 255th meeting, other delegations, while expressing their hope that further progress would be achieved during the current session of the Committee, stressed that some important issues remained to be discussed under this topic.

19. The view was reiterated that the concerns that had motivated, inter alia, the working paper had been taken up and addressed effectively by the Security Council, especially regarding the application of targeted sanctions, and that the Special Committee should avoid duplicating the work of other bodies of the Organization that address these issues.

20. In the course of intensive consultations, the Special Committee continued its work on the working document entitled "Introduction and implementation of sanctions imposed by the United Nations", contained in the annex to the present report, and decided to submit it to the General Assembly for consideration with a view to its adoption.

B. Implementation of the provisions of the Charter relating to assistance to third States affected by sanctions[12]

21. The Special Committee considered the question of the implementation of the provisions of the Charter relating to assistance to third States affected by sanctions during the general exchange of views held at the 255th meeting, on 17 February 2009, as well as during the 1st and 2nd meetings of the Working Group of the Whole, on 17 and 18 February 2009.

22. At its 2nd meeting, the Working Group was briefed by representatives of the Department of Political Affairs and the Department of Economic and Social Affairs on developments relating to paragraph 11 of the Secretary-General's report on this question (A/63/224), as requested by the General Assembly in paragraph 15 of its resolution 63/127. The statements were circulated.

23. Several delegations reaffirmed that sanctions, applied in accordance with the Charter of the United Nations, were an important tool in the maintenance and restoration of international peace and security, and should be designed with care so as to minimize any adverse impact that they might have on civilian populations and third States. The continued recourse by the Security Council to targeted sanctions, which preserved the effectiveness of sanctions while minimizing their unintended consequences, was particularly welcomed.

24. Several delegations recalled the provisions of relevant General Assembly resolutions addressing the issue of assistance to third States affected by the application of sanctions. They also noted the work accomplished by the informal Working Group of the Security Council on general issues of sanctions. While the need for strict adherence to Article 50 of the Charter of the United Nations was stressed, it was also stated that Article 50 provided a mechanism to discuss the

[12] General comments on sanctions are also covered in section A above.

effects of sanctions, but did not require the Security Council to take any specific action in that regard.

25. The view was also expressed that the Security Council had effectively addressed the question of the effects of sanctions, and that the more precise methods currently adopted by the Security Council and its committees in order to target and calibrate sanctions were increasingly successful in avoiding unintended effects. In view of the fact that none of the sanctions committees had been approached by Member States concerning special economic problems arising from the implementation of sanctions since 2003, several delegations stated that the Special Committee should acknowledge those positive developments, avoid duplication of work and conclude its consideration of this topic.

26. According to other delegations, the issue of assistance to third States affected by sanctions should be given early and special consideration by the Special Committee. It was stated that even targeted sanctions could have a significant impact on third States; accordingly, certain assessment mechanisms and other practical measures appeared necessary. A call was made for the establishment of a ready-to-function mechanism relating to assistance to third States affected by sanctions, and for the development of a methodology for assessing the impact of sanctions on third States and exploring feasible measures in order to assist those affected. It was stated that the findings of the ad hoc expert group convened in June 1998 (see A/53/312) could provide a solid basis for such work, which could be undertaken either by the Special Committee or by a working group of the Sixth Committee.

27. The need for the establishment of a specific fund to minimize the losses incurred as a consequence of the application of sanctions was questioned, particularly since the Security Council had taken steps to eliminate such economic burdens. It was noted that such costs should be considered through appropriate mechanisms such as the international financial institutions. Other delegations were of the opinion that calls for special funds or multilateral assistance in such cases deserved in-depth consideration.

C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

28. The revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in the 2002 report of the Special Committee,[13] was referred to in the general exchange of views held at the 255th meeting of the Special Committee, on 17 February 2009, as well as during the 1st meeting of the Working Group of the Whole, also held on 17 February 2009.

29. Some delegations expressed their support for the salient points raised in the proposal, in particular the provision of possible payment of compensation to target and/or third States for damage caused by sanctions found to have been unlawfully imposed. However, some other delegations expressed doubt concerning the

[13] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

relevance of this proposal in view of the ongoing work on the proposal of the Russian Federation on a similar issue.

30. The delegation of the Libyan Arab Jamahiriya requested that the proposal be kept on the agenda of the Special Committee and be transmitted to the Sixth Committee.

D. Consideration of the further revised working paper submitted by Cuba at the present session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

31. The Special Committee considered the item entitled "Strengthening of the role of the Organization and enhancing its effectiveness" during the general exchange of views held at the 255th meeting, on 17 February 2009, and during the 2nd meeting of the Working Group of the Whole, on 18 February 2009.

32. At the 2nd meeting of the Working Group of the Whole, the representative of Cuba introduced a further revised working paper entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93/Rev.1),[14] which reads:

> "In accordance with its mandate as set forth in General Assembly resolution 3499 (XXX) of 15 December 1975, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must be directly involved in the restructuring exercise that is being conducted in the United Nations in response to the growing recognition of the need for a comprehensive reform of the principal organs of the Organization.
>
> "The necessity of achieving the delicate balance envisaged in the Charter between the roles of all the principal organs, and, in particular, between the role of the General Assembly and that of the Security Council, and the necessity of reforming the Security Council by making it more representative, more transparent and more democratic in its operations, impose on the Special Committee specific tasks in fulfilment of its mandate.
>
> "These tasks are increasingly dictated by the persistence of international tensions that threaten international peace and security; the need for the full application of the principles of sovereign equality and equitable geographical representation based on the Organization's universal nature; the increase in the membership of the Organization; and the recognition that the United Nations remains a preferred alternative for Member States.
>
> "The political will on the part of States to comply with the instruments and treaties adopted by the Organization is also a necessary foundation for genuine and lasting peace.

---

[14] For previous working papers submitted by the delegation of Cuba on this topic, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 59 and *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

"Accordingly, the Special Committee has the important task of contributing actively to the efforts under way in the various open-ended working groups of the General Assembly by providing a legal analysis, from a juridical perspective, of fundamental issues involved in the reform process, including:

"The role of the General Assembly in the maintenance of international peace and security.

"On the basis of the foregoing, the Special Committee should perform the following tasks:

"(a) Conduct a study of a legal nature on the implementation of Chapter IV of the Charter, specifically its Articles 10, 11, 12, 13 and 14 dealing with the functions and powers of the General Assembly;

"(b) Study, in the light of the reform process, the validity in the present circumstances of the general exception contained in Article 12, paragraph 1, of the Charter with respect to recommendations by the General Assembly regarding a dispute which is being dealt with by the Security Council in the exercise of the functions assigned to it under the Charter, and the relationship between that paragraph and Articles 10, 11, 13 and 14.

"As demonstrated by the recent resumption of the tenth special session of the General Assembly, the objective of analysis of a question by the Assembly is not to hinder but to support the efforts of the Security Council. It is not a matter of stripping the Security Council of its fundamental role in the maintenance of international peace and security, but of supporting it in the exercise of its functions.

"A number of examples may be cited to show that the General Assembly has broad prerogatives and powers, and that many of those broad powers have never been used or fully employed.

"Article 10 of the Charter authorizes the General Assembly to 'discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter'.

"The Charter does not confer such authority on any other organ, and that authority should be actively employed.

"Article 12, paragraph 1, of the Charter provides that the General Assembly shall not make any recommendations with regard to a dispute or situation before the Security Council.

"This provision does not prevent the General Assembly from discussing any question or dispute or situation that is being considered by the Security Council, and does not exclude the possibility that a majority of the Member States may express their opinions on questions before the Council.

"Article 11, paragraph 2, provides that 'the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council'.

"The question may be discussed, but it is possible to make recommendations only if the Security Council is not discharging its functions with regard to the dispute or situation.

"Articles 13 and 14 indicate the purposes of the recommendations that the General Assembly may make.

"The Security Council must act in consonance with the purposes and principles of the United Nations. Foremost among them is to maintain international peace and security, and to that end to take effective collective measures to avert and eliminate threats to peace and to resolve other breaches of the peace.

"The Security Council must discharge its primary responsibility under Article 24 of the Charter, and all its permanent members must seek to achieve unanimity among themselves for the purpose of taking action in the event of a situation which threatens international peace and security.

"If the Members of the Organization judge or consider that the Council is not ready to act in accordance with the purposes and principle of the Organization, such a conclusion may ease the procedural restriction contained in Article 12, paragraph 1, of the Charter, and allow decisions of the Security Council to genuinely reflect the will of the majority of the Members of the Organization.

"If the Security Council, owing to a lack of unanimity among its permanent members, ceases to discharge its primary responsibility for the maintenance of international peace and security in any situation in which there is a threat to peace, a breach of the peace or an act of aggression, the General Assembly should immediately consider the question with a view to making appropriate recommendations to the members for the adoption of collective measures.

"The Special Committee on the Charter should play a more active role, from a legal viewpoint, in disputes, as indicated above, in which the Members of the United Nations might contribute to the maintenance of international peace and security.

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization could conduct the study proposed above, either acting directly or by creating ad hoc subsidiary bodies.

"The Special Committee on the Charter could analyse the following recommendations:

> "While the General Assembly may not make recommendations on a matter before the Security Council, it can discuss any question, dispute, or situation on the Council's agenda;
>
> "If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately

with a view to making appropriate recommendations to members for collective measures;[15]

"The Assembly, if not in session, may meet in emergency special session within twenty-four hours of the request therefore;

"The emergency special session may be convened at the request of the Security Council or the majority of the Members of the United Nations;

"The Special Committee on the Charter could assist in determining what is meant by the phrase, in Article 12, paragraph 1, 'is exercising in respect of any dispute or situation the functions'."[16]

33. The sponsor noted that the issues addressed in the working paper were highly relevant in the light of the persistence of international tensions which threatened international peace and security. The sponsor was of the view that the Special Committee should continue to consider, from a legal perspective, measures to revitalize the General Assembly so as to enable it to fully exercise its powers, including in the maintenance of international peace and security.

34. The working paper, which aimed at analysing the functions of the General Assembly and of the Organization with a view to strengthening their role in the maintenance of international peace and security, focused, inter alia, on the powers of the General Assembly pursuant to Articles 10, 11, 13 and 14 of the Charter of the United Nations.

35. The sponsor, also referring to General Assembly resolution 377 (V) ("Uniting for peace") of 3 November 1950, emphasized that the primary responsibility of the Security Council in the maintenance of international peace and security, as enunciated in Article 24 of the Charter, was not exclusive. In that regard, there was a need to conduct a study of a legal nature in order to identify basic criteria that would guide the General Assembly in the field of international peace and security, particularly in connection with matters being dealt with by the Security Council.

---

[15] General Assembly resolution 377 (V), "Uniting for peace", adopted in 1950, provides that: "... if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore".

[16] Statement made by the Legal Counsel at the 1637th meeting of the Third Committee on 12 December 1968: "Article 10 of the Charter of the United Nations provides that the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to t' e Security Council on any such questions or matters. Article 12 provides that while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Nevertheless, the Assembly has interpreted the words, 'is exercising' as meaning 'is exercising at this moment'; consequently it has made recommendations on other matters which the Security Council was also considering ...".

There was also a need to undertake a study on the current validity of the limitations on the powers of the General Assembly as enunciated in Article 12, paragraph 1, of the Charter, with respect to recommendations by the General Assembly regarding a dispute or situation before the Security Council.

36. The sponsor invited delegations to examine the further revised working paper, and also proposed that the Special Committee recognize the value of considering measures within the United Nations with a view to ensuring the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter of the United Nations.

E. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

37. The revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security[17] was referred to in the general exchange of views, held on 17 February 2009, as well as at the 2nd meeting of the Working Group of the Whole, on 18 February 2009.

38. The delegation of the Libyan Arab Jamahiriya requested that the proposal be kept on the agenda of the Special Committee and be transmitted to the Sixth Committee.

F. Consideration of the revised working paper submitted by Belarus and the Russian Federation

39. At the 2nd meeting of the Working Group of the Whole, on 18 February 2009, the representative of Belarus, as co-sponsor of the proposal, referred to the revised working paper submitted by Belarus and the Russian Federation at the 2005 session of the Special Committee,[18] in which it had been recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. The co-sponsor stressed that the proposal was not aimed at contributing to confrontation and that its goal was to achieve a uniform interpretation and application of the provisions of the Charter of the United Nations establishing the conditions for the resort to the use of armed force for the purpose of stopping aggression and restoring international peace and security.

40. The co-sponsor also pointed out that, in the framework of the Special Committee and the Sixth Committee, many delegations had expressed their support for requesting such an advisory opinion. According to the co-sponsor, the

---

[17] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 98.

[18] See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 33* (A/60/33), para. 56.

preparation of such an opinion by the International Court of Justice will involve a legal evaluation of international norms regarding the use of force which may result in bringing to light lacunae or contradictions in this field which may be subsequently considered by the Special Committee.

41. The co-sponsor of the proposal further highlighted the importance of the advisory opinions of the Court for the codification and progressive development of international law.

42. At its 256th meeting, on 25 February 2009, the Special Committee decided to keep the proposal on its agenda.

Chapter IV
Peaceful settlement of disputes

43. The Special Committee considered the item entitled "Peaceful settlement of disputes" during the general exchange of views held at its 255th meeting, on 17 February 2009, as well as during the 3rd meeting of the Working Group of the Whole, on 20 February.

44. During the general exchange of views, delegations reaffirmed that the peaceful settlement of disputes was one of the basic principles of international law under the Charter of the United Nations and the most effective and efficient tool for maintaining international peace and security. While a concern was expressed on the role of the Security Council regarding unilateral use of force under the pretext of self-defence, States were reminded of their obligation to settle international disputes by peaceful means, which had been reiterated in the 2005 World Summit Outcome.[19] The role of the International Court of Justice in adjudicating disputes among States was also greatly emphasized.

[19] See General Assembly resolution 60/1.

Chapter V

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

45. During the general exchange of views held at the 255th meeting of the Special Committee, on 17 February 2009, as well as during the 3rd meeting of the Working Group of the Whole, on 20 February, delegations commended the ongoing efforts undertaken by the Secretariat to reduce the backlog in the preparation of the *Repertory of Practice of United Nations Organs* and of the *Repertoire of the Practice of the Security Council*. In that regard, delegations welcomed the enhanced cooperation with academic institutions, as well as the progress made towards making both publications available on the Internet, including advance versions of the studies. Some delegations recalled the significance of the two publications as research tools for the international community, in particular for the diplomatic community and academia, and their importance in the preservation of the institutional memory of the Organization. Regret was expressed with regard to the financial situation and, in that context, some delegations called for additional voluntary contributions to the trust funds established for the preparation of the *Repertory* and the *Repertoire*.

46. At its 3rd meeting, the Working Group was briefed by the Secretariat on the status of the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

47. Concerning the *Repertory*, attention was drawn to the progress made with regard to the preparation of a number of studies, and it was pointed out that cooperation with academic institutions in the preparation of draft studies was continuing. It was emphasized that the Secretariat continued to bear the ultimate responsibility for the preparation of the studies. It was further reported that the website of the *Repertory* continued to be updated regularly. It was recalled that the General Assembly, in its resolution 63/127, had called upon States to make contributions to the trust fund for the elimination of the backlog in the *Repertory*, and appreciation was expressed to those States that had made contributions thus far. Moreover, States were encouraged to make additional contributions to the trust fund, thus enabling the Secretariat to carry out the effective elimination of the backlog in the *Repertory*.

48. With regard to the *Repertoire*, it was pointed out that the thirteenth supplement had recently been completed and its advance version was accessible in its entirety on the *Repertoire* website. It was also observed that the Secretariat continued to work on the preparation of several supplements of the *Repertoire* simultaneously, namely supplements 14 and 15, and that advance versions of several chapters of those supplements were already available online. Furthermore, attention was drawn to the fact that groundwork for the preparation of supplement 16 was already under way with the systematic tracking and recording of the most contemporary practice of the Security Council. Finally, it was noted that progress had been achieved thanks to contributions made by States to the trust fund, as well as the sponsoring of associate experts. An appeal was made for continued donations and sponsorships, and gratitude was expressed towards those States that had offered assistance thus far.

49. The Special Committee on the Charter of the United Nations recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Note with appreciation the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as the trust fund for the elimination of the backlog in the *Repertory*;

(c) Reiterate its call for voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council*; voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs* so as to further support the Secretariat in carrying out the effective elimination of that backlog; as well as the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(d) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions;

(e) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and with regard to the *Repertoire of the Practice of the Security Council*, call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952.[20]

[20] A/2170.

Chapter VI
Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

50. The issue of the working methods of the Special Committee was considered during the general exchange of views at the 255th plenary meeting of the Committee, on 17 February 2009, and at the 3rd meeting of the Working Group of the Whole, on 20 February 2009.

51. Some delegations stressed the need to further improve the working methods of the Committee, as well as to fully implement the working methods adopted in 2006. Some delegations supported reducing the duration of the Committee's session to one week in order to focus on the priority items. It was pointed out that any proposals for the addition of new items should be carefully examined in accordance with the adopted working methods; that the meetings should be conducted as efficiently as possible in order to rationalize the use of the allocated resources and time; and that the priorities in the discussion of the items before the Committee should be established on the basis of the most efficient utilization of the role of the Committee. The need to avoid duplication of the work of other bodies of the United Nations was also stressed.

52. Some other delegations stated that the full implementation of the mandate of the Committee and its efficiency also depended upon the political will of the Member States, configuration of a solid thematic agenda, based on new subjects that would allow for an optimum use of the Committee's resources, and advisory functions regarding the specialized legal questions relating to the Charter of the United Nations. In their view, the lack of concrete results in the work of the Committee during its latest sessions invited reflection about the need for more efficient approaches, including consideration of the duration of its sessions.

53. It was stressed that the Committee could contribute to the examination of the legal aspects of the reform of the Organization.

54. Some delegations supported the continuation of the Committee's consideration of all the proposals on its agenda and encouraged the Committee to conclude its deliberations on those proposals. A view was expressed in support of the continuation of the Committee's consideration of all the items and proposals on its agenda regarding the question of the maintenance of international peace and security.

B. Identification of new subjects

55. The issue of the identification of new subjects was considered during the general exchange of views at the 255th plenary meeting of the Committee, on 17 February 2009, and at the 3rd meeting of the Working Group of the Whole, on 20 February 2009.

56. The representative of Mexico, on behalf of the Rio Group, recalled the proposal by the Group entitled "Consideration of the legal aspects of the reform of the United Nations" (A/AC.182/L.126), reproduced in the 2008 report of the

Committee.[21] He reiterated that the aim of that concrete proposal was to consider the relevant aspects of the reform of the General Assembly, from a strictly technical and legal point of view, upon the request of the Assembly, and, if justifiable, to elaborate recommendations relating to the Charter amendments derived from a reform approved by the Assembly. Furthermore, he stated that the Rio Group would reserve its right to revert to this proposal at future sessions of the Committee, if the conditions were deemed positive.

57. Some other delegations stated that the proposal should be clarified and presented in a detailed fashion before it could be studied further. Some speakers also reiterated the point that they remained cautious or reluctant to include any new items in the agenda of the Committee, especially in view of the fact that some proposals had been on the agenda of the Committee for a long period of time.

58. The view was expressed in support of the consideration of any suggestions regarding the identification of new items. However, it was also pointed out by others that, while the consideration by the Committee of realistic and viable new proposals should be supported, the rigour of its work should be preserved. Thus, the view was also expressed that an explicit mandate from the General Assembly would be required for the Committee to consider new proposals relating to the revision of the Charter of the United Nations or the structure of the Organization.

59. At its 256th meeting, on 25 February 2009, the Special Committee decided not to keep the above-mentioned proposal on its agenda.

[21] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 33* (A/63/33), para. 56.

Annex

Introduction and implementation of sanctions imposed by the United Nations

I. General issues

1. Sanctions remain an important tool under the Charter of the United Nations in efforts to maintain international peace and security without recourse to the use of force. Sanctions should be carefully targeted in support of clear and legitimate objectives under the Charter and be implemented in ways that balance effectiveness to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third States.

2. The purpose of sanctions is to modify the behaviour of the target State, party, individual or entity threatening international peace and security and not to punish or otherwise exact retribution. Sanctions regimes should be commensurate with these objectives.

3. Sanctions may be resorted to by the Security Council when it determines the existence of any threat to the peace, breach of the peace, or act of aggression. The Security Council should be guided by the approach taken in annex II to General Assembly resolution 51/242, where it is indicated that sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate. The reasons that necessitate the imposition of sanctions should be identified and stated in advance.

4. The Security Council should introduce sanctions in conformity with the provisions of the Charter, taking into account other applicable rules of international law, in particular all of those related to human rights and fundamental freedoms.

5. Best practices and guidelines adopted by the Security Council and the General Assembly in the field of sanctions, in particular those contained in the 2005 World Summit Outcome, General Assembly resolution 51/242 and Security Council resolutions 1730 (2006), 1735 (2006) and 1822 (2008), should be taken into account in the elaboration and implementation of sanctions regimes. The best practices and methods contained in the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997), as taken note of in Security Council resolution 1732 (2006), might also be considered for these purposes.

6. Sanctions should be implemented and monitored effectively with clear benchmarks and should, as appropriate, have an expiration date or be periodically reviewed with a view to lifting them or not, or to adjusting them, taking into account the humanitarian situation and depending on the fulfilment by the target State and other parties of the requirements of the Security Council. Sanctions should remain in place for as limited a period as necessary to achieve their objectives and be lifted once their objectives have been achieved.

7. Sanctions regimes with regard to individuals and entities should ensure that the decision to list such individuals and entities is based on fair and clear procedures, including, as appropriate, a detailed statement of case provided by Member States, and that regular reviews of names on the list are conducted; ensure, to the degree possible, maximum specificity in identifying individuals and entities to be targeted; and ensure also that fair and clear procedures for delisting exist early

in sanctions regimes. Listed individuals and entities should be notified of the decision and of as much detail as possible in the publicly releasable portion of the statement of case. There should be an appropriate mechanism for handling individuals' or entities' requests for delisting.

II. Unintended side effects of sanctions

8. Sanctions should avoid to the extent possible adverse humanitarian effects or unintended consequences for individuals and entities not targeted or third States. Targeted sanctions are a way of achieving this.

9. An objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions should be conducted by the Security Council and its sanctions committees with the assistance of the Secretariat at the stage of their preparation, as appropriate, and in the course of their implementation. In this regard, the methodology for the assessment of the humanitarian implications of sanctions reflected in the *Sanctions Assessment Handbook* (2004) might be useful.

10. Information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State, on its socio-economic development and on third States which have suffered or may suffer as a result of their implementation, may be useful for the Security Council and its sanctions committees to consider.

11. To the maximum extent possible, situations in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States or in which the civilian population in the target State or third States would experience considerable adverse consequences should be avoided.

12. Humanitarian and other exemptions should be made available in a consistent manner to all targeted measures such as arms embargoes, travel restrictions, aviation bans and financial sanctions, and considered in accordance with fair and clear procedures.

13. Efforts should be made to ensure that sanctions regimes do not hinder an adequate supply of humanitarian assistance from reaching the civilian population. Targeted States and parties should cooperate to this end. Essential humanitarian assistance should be considered for exemption by the relevant United Nations bodies, including the sanctions committees.

14. The principles of neutrality, independence, transparency, impartiality and non-discrimination should guide the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the civilian population.

15. Humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the civilian population should not be provided without the consent of the recipient State or a request on its part.

16. In emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government), consideration should be given to the suspension of sanctions in order

to prevent a humanitarian disaster. A decision on this must be taken in each specific case.

17. Decisions on sanctions should be in accordance with the purposes and principles set out in the Charter of the United Nations. Sanctions regimes should be designed to avoid unintended consequences in the target State or third States which may lead to violations of human rights and fundamental freedoms.

III. Implementation

18. Sanctions should be implemented in good faith by all States.

19. Monitoring and compliance are first and foremost the responsibility of individual Member States. Member States should endeavour to prevent or correct activities in violation of the sanctions measures within their jurisdiction. In this regard the provisions of the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997) should be taken into account, as appropriate.

20. International monitoring by the Security Council or by one of its subsidiary organs of compliance with sanctions measures, in accordance with relevant Security Council resolutions, can contribute to the effectiveness of United Nations sanctions. States that may require assistance in the implementation and monitoring of sanctions may seek the assistance of the United Nations or relevant regional organizations and donors.

21. States and relevant international and regional organizations with the capacity to do so should be encouraged to offer appropriate technical and financial assistance to other States to enhance their capacity to implement sanctions effectively.

22. States should be encouraged to cooperate in exchanging information about the legislative, administrative and practical implementation of sanctions.

09-25053 (E) 200309